

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES E. NICHELSON,

Defendant-Appellant.

UNPUBLISHED
October 31, 2000

No. 216065
Wayne Circuit Court
LC No. 98-004411

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for felonious assault, MCL 750.82; MSA 28.277, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and discharge of a weapon in a building, MCL 750.234b; MSA 28.431(2). We affirm.

Defendant asserts he was denied the effective assistance of trial counsel where counsel failed to consult with defendant, failed to investigate a potential defense, and failed to present certain witnesses.

To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant did not request an evidentiary hearing in the trial court, and this Court's review is limited to errors apparent on the record. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). There is no evidence to support defendant's allegations that counsel was unprepared for trial, or that there were other witnesses available who could have supported defendant's claims. Defendant has failed to show that the actions of counsel deprived him of a substantial defense. *People v Hoyt*, 185 Mich App 531; 462 NW2d 793 (1990). Defendant has not overcome the presumption that he received effective assistance of counsel. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage